

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8 and 2013 Iowa Acts, Senate File 182, section 5, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 5, “Regulation of Insurers—General Provisions,” Iowa Administrative Code.

The purpose of rule 191—5.33(510), Credit for reinsurance, is to set forth the procedural requirements which the Insurance Commissioner deems necessary to carry out the provisions of 2013 Iowa Acts, Senate File 182, sections 1 to 6. The actions and information required by this rule are necessary and appropriate to the public interest and for the protection of the ceding insurers in this state. These amendments correct cross reference mistakes that were inadvertently overlooked in the previous rule making (see **ARC 1111C**, IAB 10/16/13).

Any interested person may make written comments on or before December 3, 2013. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, 5th Floor, Des Moines, Iowa 50309-3738. Comments may also be submitted electronically to matthew.hargrafen@iid.iowa.gov or via facsimile to (515)281-3059.

A public hearing will be held on December 4, 2013, at 10 a.m. in Conference Room 4 North, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, 4th Floor, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing and mobility impairments, should contact the Division and advise of their specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 521B.

The following amendments are proposed.

ITEM 1. Amend subparagraph **5.33(10)“b”(3)** as follows:

(3) All assets in the trust account shall be held by the trustee at the trustee’s office in the United States, except that a bank may apply for the commissioner’s permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this subrule. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph ~~5.33(9)“b”(4)~~ **5.33(10)“b”(4)** must also be presentable, as a matter of legal right, at the trustee’s principal office in the United States.

ITEM 2. Amend numbered paragraph **5.33(10)“b”(4)“4”** as follows:

4. It shall not contain references to any other agreements or documents except as provided for under subparagraph ~~5.33(9)“b”(11)~~ **5.33(10)“b”(11)**.

ITEM 3. Amend numbered paragraph **5.33(10)“b”(11)“3”** as follows:

3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer’s entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer, in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in

subparagraph ~~5.33(9)“d”(1)~~ 5.33(10)“d”(1) as may remain executory after such withdrawal and for any period after the termination date.

ITEM 4. Amend subparagraph **5.33(10)“c”(3)** as follows:

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in ~~5.33(9)“d”(1)“2.”~~ 5.33(10)“d”(1)“2.”

ITEM 5. Amend numbered paragraph **5.33(10)“d”(2)“2”** as follows:

2. Provide for:

- The return of any amount withdrawn in excess of the actual amounts required to comply with ~~5.33(9)“d”(1)“5,”~~ 5.33(10)“d”(1)“5,” first three ~~unnumbered~~ bulleted paragraphs, or in the case of ~~5.33(9)“d”(1)“5,”~~ last ~~unnumbered~~ 5.33(10)“d”(1)“5,” fourth ~~unnumbered~~ bulleted paragraph, any amounts that are subsequently determined not to be due; and

- Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(9)“d”(1)“5,”~~ 5.33(10)“d”(1)“5,” third ~~unnumbered~~ bulleted paragraph.

ITEM 6. Amend numbered paragraph **5.33(10)“d”(2)“3”** as follows:

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

- Interest at a rate different from that provided in ~~5.33(9)“d”(2)“2”~~ 5.33(10)“d”(2)“2”;
- Court of arbitration costs;
- Attorney’s fees;
- Any other reasonable expenses.

ITEM 7. Amend subparagraph **5.33(10)“d”(5)** as follows:

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in ~~subparagraph 5.33(9)“a”(1)~~ paragraph 5.33(10)“a” shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

ITEM 8. Amend paragraph **5.33(11)“a”** as follows:

a. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subparagraph ~~5.33(10)“i”(1)~~ 5.33(11)“i”(1). As used in this paragraph, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

ITEM 9. Amend numbered paragraph **5.33(11)“i”(1)“3”** as follows:

3. All of the provisions required by paragraph ~~5.33(10)“i”~~ 5.33(11)“i” should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

ITEM 10. Amend numbered paragraphs **5.33(11)“i”(2)“1”** and **“2”** as follows:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~5.33(10)“i”(1)“2,”~~ 5.33(11)“i”(1)“2,” third ~~unnumbered~~ bulleted paragraph.

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the event ~~5.33(10)“i”(1)“3,”~~ 5.33(11)“i”(1)“2,” fourth ~~unnumbered~~ bulleted paragraph, is applicable, any amounts that are subsequently determined not to be due.

ITEM 11. Amend subparagraph **5.33(11)“i”(3)** as follows:

(3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of ~~5.33(10)“i”(1)“2,”~~ 5.33(11)“i”(1)“2,” require that the parties enter into a “Trust Agreement” which may be incorporated into the reinsurance agreement or be a separate document.